The impact of *Bush v. Gore* on public perceptions and knowledge of the Supreme Court

By Herbert M. Kritzer
To those who pay close attention to the United States Supreme Court, its involvement in the 2000 presidential election, through its decisions concerning recounts of the vote in Florida, was an extremely important, perhaps watershed, event in the Court’s role in the American political and legal system. The volume and tone of the online and print discussions about the Court’s actions among political scientists and law professors has been heated, contentious, and at times strident.1 A central concern, particularly among critics of the decision, is that the Court may have undermined its own legitimacy, at least among members of the public who had been ardent supporters of Al Gore or ardent opponents of George W. Bush.

What impact did the Court’s action actually have on the public’s view of the Court? There are two types of hypotheses that one might advance. First, the Court’s image may have suffered generally because of a concern that it embroiled itself in electoral politics when it should have stayed above the fray. Second, the overall approval of the Court may have been unchanged because of cross-cutting shifts, with those approving of the Court’s decision increasing their support and those disapproving the decision decreasing their support; in this case, one would observe a shift in the structure of support rather than the level of support.

While most of the commentary has been on the impact of *Bush v. Gore* on the public’s view of the Court, there is another type of effect that may have resulted from the high level of attention focused on the Court and the unprecedented nature of media coverage (that is, the broadcasting of

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recordings of oral argument immediately upon the conclusion of those arguments). The controversy over the election, including the involvement of the Supreme Court, has been described as a massive civics lesson; did this national civics lesson increase the public's knowledge about the Court?

Most research on the public's knowledge of the Supreme Court concludes that the public knows little about the Court or its workings. A regularly cited example of the public's ignorance is that in 1989, 71 percent could not name a single member of the Court while 54 percent of the same sample could name the judge on the television show "The People's Court". That this survey found such results was not news to political scientists, who have long documented the minimal knowledge most citizens have about the Court.

One impact of the Court's involvement in resolving the 2000 election was extensive discussion of the role of discretion on the Court, how the Court operates, and how it is staffed. It might well be that the national civics lesson has increased public knowledge about the Court.

What evidence is there regarding the impact of Bush v. Gore on the public's evaluation of and knowledge about the U.S. Supreme Court? Ideally one needs to have comparable before and after data. By good fortune, I happen to have exactly that type of data.

Data
In the spring of 2000 I placed a set of questions about public knowledge of the Supreme Court (and some other aspects of the judicial system) on an ongoing survey conducted by the University of Wisconsin Survey Center (UWSC). (See “Measuring knowledge of the U.S. Supreme Court,” above).

In addition, the survey routinely includes a general evaluation question regarding the Court:

On a scale of 1 to 10, where 1 means very poor and 10 means excellent, how would you rate the job the Supreme Court is doing?

Starting December 14, 2001 (Bush v. Gore was announced the evening of December 12), I added the following question:

The United States Supreme Court ruled that the plan for recounting presidential votes in Florida ordered by the Florida Supreme Court violated the U.S. Constitution and thus could not...
proceed. Would you say you strongly approve of this decision, somewhat approve, somewhat disapprove, or strongly disapprove of the decision?

The survey also has a variety of general questions about political preference, party identification, attention paid to public affairs, interest in politics, education, income, race, and gender. In a typical week UWSC interviews 20–40 randomly selected respondents from around the United States. Each week’s interviews can be treated as an independent random sample, which means that weeks can be aggregated to obtain random sample covering periods of time.

A total of 291 respondents were interviewed after December 12, 2000, and 874 were interviewed through December 12, 2000. Because of the holiday season, relatively few interviews were conducted in the three weeks immediately after the decision (a total of 23), but the weekly totals returned to the 30-40 range starting in January. In order to assure some reasonable minimum number of respondents, the overtime analyses presented below will aggregate into two 1-week (14-day) periods.

**Changes in evaluations**

Figure 1 shows the biweekly fluctuation in the public’s evaluations of the Court; the vertical line demarcates the before and after periods for the Court’s decision ending the election controversy. While the figure may show some drop in the average evaluation, that drop is neither clear cut nor particularly sharp. Overall, the average evaluation for the before period is 6.04 compared with 5.81 for the after period, hardly an earthshattering change; a t-test of the difference of means shows no statistically discernible difference.

This should not be particularly surprising. Given the fact that the public was evenly divided by the election, and the apparent pattern from public discourse that supporters of George W. Bush approved the Court’s decision and supporters of Al Gore disapproved, that might well be cross-cutting changes with Bush supporters (Republicans) increasing their approval of the Court and Gore supporters (Democrats) decreasing their approval.9

Breaking the responses into categories (1 to 4 “unfavorable”, 5 and 6 “neutral”, and 7 to 10 “favorable”) results in the pattern for approval of the Court and Gore supporters (Democrats) decreasing their approval.10 One intriguing element of the results in Table 1 is the high, unfavorable rating by independents, constant over the two periods and higher than even for Democrats after the Court’s decision.

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7. For purposes of analysis, party identification is measured along the “standard” seven-point scale: strong Democrats, “weak” Democrats, Independents leaning toward the Democratic Party, Independents, Independents leaning toward the Republican Party, “weak” Republicans, and strong Republicans. All respondents who initially did not self-describe as Democrats or Republicans were asked the follow-up question about which party they were closer to; respondents who named one or the other party were coded as “Independents” leaning toward that party, and those who explicitly stated they did not lean toward either, were coded as “Independents” not leaning toward either party.

8. Because the decision actually came down late during the evening of December 12, I include the interviews conducted on December 12 as before the decision.

9. The presence of a partisan dimension to public evaluations of the Supreme Court has been recognized since at least the 1960s, see Dolbeare and Hammond, *The Political Party Bias of Attitudes Toward the Supreme Court*, 32 PUB. OPINION Q. 16 (1968).

10. One intriguing element of the results in Table 1 is the high, unfavorable rating by independents, constant over the two periods and higher than even for Democrats after the Court’s decision.
There is one other point worth noting from the results presented above. While the evaluation of the Court by self-identified Democrats and Independents who leaned toward the Democratic Party shifted clearly in the unfavorable direction, the post-election negativity of these segments of the citizenry only approached the negativity both before and after the election of Independents who did not lean toward one party or the other. This may portend a change in the nature of those who call themselves Independent without any preference between the parties. Where historically these individuals were seen as unengaged in politics, today the group may be comprised more of persons who are seriously alienated from government and politics.

A favorable response across the full range of the party identification scale. There is no clear relationship between strength of party identification and the magnitude of the shift in percentage favorable to the Court. Among Democrats, strong partisans and independent leaners shift more than weak partisans, while among Republicans, it is the weak partisans who show the strongest shift.

I also explored the possibility that stronger shifts might be found using self-reported ideology as the basis of comparison rather than party identification. The survey included the following item measuring the respondent’s ideology:

We hear a lot of talk these days about liberals and conservatives. On a scale of 1 to 10, where 1 is extremely liberal and 10 is extremely conservative, where would you place yourself?

Collapsing this into liberal (1 to 3), moderate (4 to 7), and conservative (8 to 10), shows shifts similar to those based on party identification. The shifts for conservatives are slightly less sharp than for Republicans; the shifts for liberals are about the same vis-à-vis “favorable”, but slightly sharper for “unfavorable” (17 percent unfavorable before, 42.5 percent unfavorable after for about a 25 percentage point shift).

Impacts on evaluation

The Supreme Court’s Bush v. Gore decision ending the recount of the presidential vote in Florida had measurable consequences for the public’s view of the Court, at least in the short term. Importantly, the net effect on the public’s evaluation of the Court was essentially nil; increases in negative evaluations were almost exactly offset by increases in positive evaluations. The more important impact was on the structuring of public evaluations of the Court. Where before the decision on December 12 partisanship was not related to evaluation of the Court, after the election it was, and this relationship was clearly mediated by the specific approval or disapproval of the Court’s decision in Bush v. Gore. It is clearly too early to tell whether the impacts are temporary, or whether the Court’s action will fade from the public consciousness resulting in a return to the situation where evaluation of the Court is unrelated to political partisanship. However, although these changes are measurable (on the order of one third to one half of a standard deviation for Democrats and for Republicans) and significant, their magnitude should not be overstated; the shift in the means for the two groups of partisans was on the order of about one to one and a half points on the 10-point scale used to measure the public’s evaluation of the Court. Given the heated discussion and rhetoric during and immediately after the election controversy, those actively involved in the shouting almost certainly presumed that the impact would have been greater.11

Changes in knowledge

If the Court’s decision in Bush v. Gore was limited in its effect on the

<table>
<thead>
<tr>
<th>Before</th>
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<tr>
<td>Favorable</td>
<td>Unfavorable (n)</td>
</tr>
<tr>
<td>Democrats</td>
<td>51.6%</td>
</tr>
<tr>
<td>Republicans</td>
<td>45.8%</td>
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<tr>
<td>Independents</td>
<td>31.5%</td>
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</table>

11. There is one other point worth noting from the results presented above. While the evaluation of the Court by self-identified Democrats and Independents who leaned toward the Democratic Party shifted clearly in the unfavorable direction, the post-election negativity of these segments of the citizenry only approached the negativity both before and after the election of Independents who did not lean toward one party or the other. This may portend a change in the nature of those who call themselves Independent without any preference between the parties. Where historically these individuals were seen as unengaged in politics, today the group may be comprised more of persons who are seriously alienated from government and politics.
public’s assessment of the Court, can that also be said of the “national civic’s lesson”? Was there a measurable effect on the public’s knowledge of the structure and operation of the Court? Recall that the survey included six knowledge questions (see “Measuring knowledge of the U.S. Supreme Court,” page 34):

- Size of the Court
- The age at which justices must retire
- Who appoints the justices
- Who is chief justice
- Supreme Court’s use of juries
- Control of docket

For purposes of analysis I combined incorrect and “don’t know” responses.

Table 2 shows the percentage of correct responses (versus incorrect and “don’t know” responses) for each of the six questions, before and after December 12, 2000; in addition, it shows the mean number of correct responses. One striking feature of the data is the relatively high awareness of the public. Two thirds or more respondents gave correct responses on a number of the questions: who chooses justices, the [non] use of juries by the Supreme Court, and the Court’s discretion in which cases it will decide. About half the respondents knew that there is no mandatory retirement age for justices. Relatively few respondents could name the current chief justice—a pattern that has been found again and again in survey research—and only a minority of respondents knew the number of justices who serve on the Court. On average, respondents were able to give correct answers for slightly more than 3 of the questions (3.15, standard deviation 1.74); 64.1 percent knew correct responses to three or more of the items, 46.1 percent four or more, and 24.9 percent five or more.

Comparing before and after figures, for every item the percentage of correct responses was higher after Bush v. Gore than before, although for only three is the increase statistically significant. Looking at the mean number of correct responses, this goes from about three (3.04) to about three and a half (3.48). This is a statistically significant change, but it represents only about one quarter of standard deviation; recall that the shift in the scale measuring approval of the Supreme Court was on the order of one third to one half a standard deviation among partisans (down for Democrats and up for Republicans).

In terms of the individual responses, the biggest change was in being able to name the chief justice: only 16 percent of respondents could do this before Bush v. Gore compared with 31 percent after; this is all the more interesting given that the chief justice did not play a particularly prominent role in this case (the majority decision was per curiam although Justice Rehnquist did file the only concurring decision, advancing additional reasons for stopping the recount).

Clearly, one impact of the massive coverage of the Supreme Court’s handling of the ballot controversy in Florida was to increase modestly the public’s knowledge about the Court. Whether this increase is a permanent change or simply a temporary “blip” only time will tell.

### Table 2: Knowledge of the U.S. Supreme Court

<table>
<thead>
<tr>
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<th>Percent (or mean) correct</th>
<th>Total</th>
<th>Before</th>
<th>After</th>
</tr>
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<tbody>
<tr>
<td>Size of Court***</td>
<td>31.3%</td>
<td>28.7%</td>
<td>39.0%</td>
<td></td>
</tr>
<tr>
<td>Mandatory retirement age</td>
<td>47.9%</td>
<td>46.4%</td>
<td>52.6%</td>
<td></td>
</tr>
<tr>
<td>Who appoints justices</td>
<td>68.4%</td>
<td>67.9%</td>
<td>69.8%</td>
<td></td>
</tr>
<tr>
<td>Who is chief justice***</td>
<td>19.8%</td>
<td>16.0%</td>
<td>31.0%</td>
<td></td>
</tr>
<tr>
<td>Supreme Court’s use of juries*</td>
<td>74.6%</td>
<td>73.2%</td>
<td>79.0%</td>
<td></td>
</tr>
<tr>
<td>Control of docket</td>
<td>71.9%</td>
<td>70.9%</td>
<td>74.9%</td>
<td></td>
</tr>
<tr>
<td>Mean number correct***</td>
<td>3.15</td>
<td>3.04</td>
<td>3.48</td>
<td></td>
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</tbody>
</table>

*p<.10, *p<.05, **p<.01, ***p<.001 (before/after difference; two-tailed)

The biggest change was in being able to name the chief justice
and Democrats became less supportive. Not surprisingly, this is directly related to whether they approved or disapproved of the Court’s decision (statistical analysis available from the author), which in turn is almost certainly a function of whom individuals voted for.

Political scientists have debated whether approval of specific decisions of the Court, labeled “specific support,” affects the public’s general evaluation of the Court, labeled “diffuse support.” My analysis, albeit based on a very unsophisticated measure of diffuse support, does show a clear linkage in the case of the Court’s action in the 2000 election ballot controversy. Still, while the effects on public evaluations are clear, they are, on average, not strikingly large. Given the dramatic nature of the events, an expectation of dramatic shifts in public evaluations of the Court seemed reasonable. Dramatic changes did not materialize.

Similarly, while there were clear increases in the public’s knowledge of the Supreme Court, these increases were not dramatic. The largest change was in knowing the name of the chief justice, even though Chief Justice Rehnquist did not play a particularly prominent role during the events of early December. If one were to look at my six measures of knowledge, the one that probably played most prominently during this period was related to who appoints the justices; there was significant commentary about the fact that the justices were determining who would be choosing their new colleagues or their own replacements. Public knowledge on this item was unchanged between the two periods; while the level of knowledge was high, and hence there was less for the public to learn than for many other items, an item with an even higher level of knowledge did show a significant increase—whether the Supreme Court uses juries. With regard to the level of knowledge, it will be interesting to see whether the changes are permanent or only temporary.

The modesty of the overall effects is probably the most interesting part of these findings. The Supreme Court’s action was dramatic, subject to unprecedented media coverage, controversial, and to many very surprising (the decision by the Court to get involved as well as the decision itself). Nonetheless, the effects are modest. One might ask what, if anything, could lead to dramatic effects in how the public views the Court and how much they know about the Court. The only obvious answer, something the Court has strenuously resisted, would be to open the Court proceedings to television coverage. In many ways, the lessons of the impact of Bush v. Gore might be seen as justifying the Court’s reluctance to open itself to greater coverage. While the public may lack awareness of many aspects of the Court that might be rectified by greater coverage, keeping the doors closed to television may also serve to limit the vehemence of the public reaction to what the Court decides.

### What the Gallup Poll found

**Question:** Do you approve or disapprove of the way the Supreme Court is handling its job?

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<tbody>
<tr>
<td>All</td>
<td>62%</td>
<td>59%</td>
<td>62%</td>
</tr>
<tr>
<td>Democrats</td>
<td>70%</td>
<td>42%</td>
<td>54%</td>
</tr>
<tr>
<td>Republicans</td>
<td>60%</td>
<td>80%</td>
<td>74%</td>
</tr>
<tr>
<td>Independents</td>
<td>57%</td>
<td>54%</td>
<td>59%</td>
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<thead>
<tr>
<th></th>
<th>June 22-25, 2000</th>
<th>Dec 15-17, 2000</th>
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<tbody>
<tr>
<td>All</td>
<td>47%</td>
<td>49%</td>
</tr>
<tr>
<td>Democrats</td>
<td>44%</td>
<td>49%</td>
</tr>
<tr>
<td>Republicans</td>
<td>48%</td>
<td>67%</td>
</tr>
<tr>
<td>Independents</td>
<td>48%</td>
<td>45%</td>
</tr>
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**Question:** Now I am going to read you a list of institutions in American Society. Please tell me how much confidence you, yourself, have in each one—a great deal, quite a lot, some, or very little? First, ... Next, [Supreme Court included in list of five institutions; the order of the institutions was randomized.]

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